



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- against - :

PETER LESNIEWSKI and JOSEPH  
RUTIGLIANO, :

Defendants. :

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11 CR. 1091 (VM)

ORDER

VICTOR MARRERO, United States District Judge.

On August 6, 2013, defendants Peter Lesniewski ("Lesniewski") and Joseph Rutigliano ("Rutigliano", collectively, "Defendants") were each found guilty by a jury on multiple counts of fraud. (See Dkt. Minute Entries dated 8/6/2013.) On January 1, 2014, Rutigliano was sentenced to ninety-six (96) months imprisonment. (Dkt. No. 592.) On February 21, 2014, Lesniewski was also sentenced to ninety-six (96) months imprisonment. (See Dkt. No. 649.)

On October 2, 2015, Lesniewski filed a motion for a new trial or, in the alternative, for re-sentencing (Dkt. No. 817) under Rule 33 of the Federal Rules of Criminal Procedure ("Rule 33") "based on newly discovered evidence that squarely contradicts a fundamental premise of the government's case at trial" (Dkt. No. 819). Lesniewski alleges that (1) the Railroad Retirement Board ("RRB") conducted post-trial evaluations of the disability claims of

the applicants who had been treated by Defendants, (2) it did so using a heightened standard of evaluation, and (3) the RRB subsequently approved 96.6% of Lesniewski's former patients as genuinely eligible. (Id. at 9.) Lesniewski alleges that this information would have led the jury to find Lesniewski had not defrauded the RRB.

On October 13, 2015, Rutigliano filed a motion for a new trial or, in the alternative, for re-sentencing (Dkt. No. 822) under Rule 33, "based upon newly discovered evidence which consists of post-trial findings by the Railroad Retirement Board (RRB) that 498 of 530 disability pension awards the government previously claimed were fraudulent, were, in fact, not fraudulent" (Dkt. No. 824).

Defendants both allege that this new evidence would have caused the related charges to be dismissed, caused the jury to acquit, or at a minimum would have decreased the loss attributable to Defendants and therefore substantially decreased their ranges under the United States Sentencing Guidelines. The Court finds that these motions should not be summarily dismissed and that the Government should file a response.

Accordingly, it is hereby

**ORDERED** that the Government is directed to respond to the motions of defendants Peter Lesniewski (Dkt. No. 817)

and Joseph Rutigliano (Dkt. No. 822) for a new trial or, in the alternative, a re-sentencing within sixty (60) days of the date of this Order.

**SO ORDERED.**

Dated: New York, New York  
30 October 2015

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

VICTOR MARRERO  
U.S.D.J.